

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

#33 Brief
PD
5/28/02

Applicant : Thomas G. Woolston Art Unit: 2165
Serial No.: 09/253,014 Examiner: Kemper, M.
Filed : February 19, 1999
Title : METHOD AND APPARATUS FOR FACILITATING ELECTRONIC
COMMERCE THROUGH INTERNET AUCTIONS

BOX AF

Commissioner for Patents
Washington, D.C. 20231

BRIEF ON APPEAL

Sir:

Applicant herewith files this brief on appeal under 37 CFR
192. The headings required by rule 37 CFR 192(c) follow.

(1) Real Party in Interest

The application is assigned of record to MercExchange LLC,
who is the real party in interest.

(2) Related Appeals and Interferences

A. U.S. Patent Application Serial No. 08/427,820, filed
April 26, 1995, is on appeal before the Board of Patent Appeals
& Interferences. Briefing has been completed.

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B. U.S. Patent Application Serial No. 09/203,286, filed December 2, 1998, is pending in Art Unit 2164 before Vincent Millin awaiting decision on a request to declare an interference with U.S. Patent No. 5,794,207.

(3) Status of Claims

Claims 11-25, 33-55, 64-99 and 139-218 are pending in the case. All of the pending claims were finally rejected in an office action mailed April 11, 2001 ("the office action").

(4) Status of Amendments

No amendments have been filed subsequent to the final rejection.

(5) Summary of Invention

The claimed invention relates to computer-implemented methods and systems for conducting auctions on the Internet. [P.9, L.22-P.12, L.5; P.13, L.18-P.14, L.2] Sellers who desire to auction items on the Internet use their respective computer systems to provide relevant information to a host computer system. [P.5, L.4-6; P.10, L.3-10; P.13, L.22-24; P.17, L.22-P.18, L.15; Fig. 3] The information provided by a seller may include a description of the item to be auctioned (e.g., a designation of category under which the item is to be auctioned)

as well as information relating to scheduling an auction for the item. [P.10, L.5-10; P.18, L.23-25] In one embodiment, the scheduling information may correspond to a starting time and/or date for the auction, or an indication that the auction is to be invoked by the user manually. [P.10, L.5-10]

The host computer system uses the seller-provided information to initiate an Internet-based auction for the item according, at least in part, to the scheduling information thereby making the item available via the Internet to potential bidders in an electronic auction format. [P.10, L.5-10 and 25-27; P.18, L.23-25] These potential bidders can use their respective computer systems to communicate with the host computer system to make bids on desired items, provide payment information, and the like. [P.10, L.17-19; P.11, L.2-9 and 17-19]

In an embodiment described in the specification, a communication handler program executing on a host computer system receives information from a seller corresponding to an item for auction. [P.26, L.13-22; P.17, L.22-P.18, L.15; Fig. 3; Fig. 12] This information includes (i) a designation of a category, selected from among a list of categories (e.g., watches, baseball cards, antique pens, etc.), under which the item for auction is to be listed [P.23, L.27-P.24, L.8; P.28,

L.9-17; Fig. 13], and (ii) input relating to scheduling an auction for the item. [P.10, L.5-10; P.18, L.23-25]

Optionally, the seller-provided information also may include an indication whether the item offered for auction is to be advertised to potential bidders, for example, in advance of the auction. [P.10, L.12-16; P.11, L.22-P.12, L.5; P.16, L.6-9]

All or part of the information received from the seller is processed by a database-to-presentation format formatting program to generate a presentation format to be displayed to potential bidders. [P.26, L.17-22; P.34, L.1-7; Fig. 12] The presentation format includes, potentially among other things, an indication of the category of the item for auction. [P.23, L.27-P.24, L.8; Fig. 13] The host computer system presents the presentation format to potential bidders and facilitates an auction for the item over the Internet according, at least in part, to the auction scheduling information provided by the seller. [P.34, L.9-11; P.10, L.8-19 and 25-26; P.18, L.23-25] For example, the auction scheduling information provided by the seller may specify that the auction is to commence this coming Saturday night at 7:00p.m. [P.10, L.5-10] In this example, the host computer would initiate an auction for the seller's item at the time specified by the seller. [P.10, L.8-25]

After the auction for the item has been initiated, bids on the item may be received via the Internet at the host computer system from one or more bidders. [P.11, L.2-6; P.18, L.22-P.20, L.12; Fig. 4] Once a winning bidder has been determined, the winner provides payment information to the host computer system. [P.11, L.8-19; P.22, L.1-17]

The claims on appeal recite computer-implemented methods and systems for conducting auctions on the Internet in which a seller provides information identifying an item to be auctioned and information relating to scheduling an auction for the item, and in which an auction is initiated at least in part on the auction scheduling information received from the item's seller.

(6) Issues

The issues for review are:

A. Did the Patent Office err by failing to provide evidentiary support for the Group I, II and III claim rejections under 35 USC 103(a) and instead, in direct violation of In re Lee, 277 F.3d 1338 (Fed. Cir. 2002), relying on more than 20 unsupported and conclusory assertions of obviousness, inherency, and/or motivation to combine or modify?

B. Are the explicit disclosures in the specification, inter alia, that a user of the electronic auction system can manually invoke an auction process, or may schedule the execution of an

auction process, for example, by specifying times and/or dates relating to the scheduling of an auction, sufficient to provide 35 USC 112(1) support for the Group IV claims relating to auction scheduling?

(7) Grouping of Claims

For the purposes of this appeal only, the following Groups of claims rise or fall together:

Group I: Claims 11-25, 33-55, 64-65, 68-81, 84-93, 97-99, 139-144 and 146-218

Group II: Claims 82-83, 94-96 and 145

Group III: Claims 66 and 67

The following Group IV applies only to the rejection under 35 USC 112(1).

Group IV: 148-152, 154-158, 160-164, 166-170, 172-176, 178-182, 184-188, 190-194, 196-200, 202-206 and 213-217

(8) Argument

- A. The Patent Office Improperly Relied on Multiple Unsupported Assertions of Obviousness, Inherency and Motivation to Combine, and thus has Failed to Make a Prima Facie Case of Obviousness

At pages 2-9 of the office action, the Patent Office asserts that the Group I-III claims are unpatentable under 35 USC 103(a) based on various combinations of Salmon (USP

5,592,375), Sharp ("From Army Knives to Gold Coins...", Memphis Business Journal v.8, n.10, p.10), Wright ("Is it Time to Travel the Auction Route?", Real Estate Today, v.24, n.6, p.46(5)), Internet Providers ("Internet Providers Take Next Step Toward Electronic Commerce"), Debenedictis (USP 5,625,823), and Keithley (USP 5,584,025). Appellant respectfully disagrees.

As an initial matter, Appellant submits that the Patent Office has failed to meet its burden of establishing a prima facie case of obviousness based on objective evidence in the record. In re Grasselli, 713 F.2d 731, 739 (Fed. Cir. 1983); In re Lee, 277 F.3d 1338, 1342 (Fed. Cir. 2002). Rather, the office action is replete with holes - that is, veritable admissions that that the art of record fails to disclose or suggest several features of the claims - that the Patent Office attempts to plug with wholly unsupported and conclusory assertions of obviousness, inherency and motivations to combine or modify.

By failing to identify specific teachings in the cited art for several of the claim features, the office action implicitly acknowledges that the cited art - regardless of how it hypothetically may be combined - fails to disclose or suggest the subject matter of the claims. Under such circumstances, the Patent Office has only two permissible options: (1) concede that

the claims are patentable over the cited art and allow the application, or (2) attempt to locate and cite additional references or other **evidentiary support** to fill the holes in the Patent Office's deficient rejections. But in this case, the Patent Office chose a third, albeit impermissible, course of action - namely, making wholly unsupported assertions and conclusory statements that the claim features not taught or suggested in the art of record are obvious or inherent simply because the Patent Office says so.

The Federal Circuit has recently reaffirmed that obviousness rejections based on assertions lacking evidentiary support in the record cannot stand. In In re Lee, 277 F.3d 1338 (Fed. Cir. 2002), the Federal Circuit vacated a Patent Office Board affirmance of an obviousness rejection because, rather than relying on objective evidence, the Patent Office based its obviousness rejection on conclusory statements having no evidentiary support in the record. Id. at 1342-43. In doing so, the Federal Circuit made it abundantly clear that "subjective belief and unknown authority" and "[assertions of] common knowledge and common sense" are **not** "a substitute for evidence." Id. at 1343-44.

In direct violation of In re Lee, the office action is replete with more than 20 such unsupported assertions and

conclusory statements. Examples of these improper statements can be found on each of pages 3, 4, 5, 6, 7, 8 and 9 in the office action. Some of the more egregious examples of unsupported allegations and conclusory statements follow:

At page 3, lines 15-19, the Patent Office asserts that it would have been obvious to combine Salmon and Sharp because "the sellers have a possibility of receiving more money than the asking price or base price for the items thereby providing incentive to users to choose auctioning over brokering." Yet the Patent Office provides no authority for this conclusory statement. As made clear in In re Lee, asserting a motivation to combine references based, as here, on "subjective belief and unknown authority" is improper. Id. at 1343.

Contrary to the Patent Office's assertion, auctioning is not per se superior to static price selling but rather both have their own attendant advantages and disadvantages. Indeed, even Wright, one of the references relied on in rejecting the claims, discloses that one of the major disadvantages of auctions "is the uncertainty of just what price [the] property will bring." Wright at 1. Consequently, a person of skill in the art seeking to modify Salmon would just as likely be **discouraged** from using auctioning because, among other reasons, the final auction price

for the item may turn out to be **less** than the price at which the item could be sold in a static-priced market.

In any event, the Patent Office has provided no evidentiary support for the conclusory assertion that a motivation exists to combine Salmon and Sharp because auctions supposedly are inherently more attractive than static-priced markets. Lacking evidentiary support, the alleged motivation for combining Salmon and Sharp is improper and cannot stand.

At page 3, line 19 - page 4, line 3, the Patent Office asserts that an alternative motivation for combining Salmon and Sharp is that such a combination "would have provided a more enhanced auctioning system by providing users with more information in terms of graphics/multimedia thereby promoting use by the public." Here, the Patent Office simply is engaging in hindsight reconstruction to piece together references using Appellant's own claims as a blueprint. This alternative alleged motivation to combine is no more than an assertion that, if someone had thought of combining Salmon and Sharp, then the combination would result in an enhanced system. This unsupported and conclusory assertion, even if true, is irrelevant.

The question of the obviousness of a claimed combination vel non is **not** whether the resulting combination is somehow

superior (typically, the applicant's own specification will disclose that the claimed combination is advantageous), but rather would a skilled artisan, on his own accord and without the benefit of the applicant's disclosure, appreciate that combining features of different references would result in a superior system, and that the features could and should be so combined. Here, the Patent Office has failed to provide any evidentiary support that a skilled artisan would be so motivated but rather has relied on advantages suggested in Appellant's own disclosure and claims as a motivation for combining Salmon and Sharp. Consequently, this alternative motivation to combine is similarly deficient.

At page 4, lines 6-11, of the office action, the Patent Office asserts that it would have been obvious "to have allowed the seller to set the scheduling of the auction and conducted the auction of the item ... since allowing the seller to set the schedule would have offered control to the seller and accommodate the seller's needs ... thereby providing incentive over the sale of Salmon or lack of seller control of Sharp." In other words, the Patent Office is asserting that the seller-specified auction scheduling feature of the Group I claims is obvious because it provides significant advantages.

It is difficult to imagine a more blatant application of hindsight reconstruction. The only motivation provided for combining the cited references appears to be taken directly from Appellant's own disclosure and claims. But it is well settled that the Patent Office cannot, as it has done here, use the applicant's own disclosure and claims against him as the motivation for combining reference. Rather, the Patent Office must point to **objective teachings in the record** that suggest the desirability of the combination or modification. Clearly, the Patent Office has failed to do in this additional instance.

One of the more striking examples of the Patent Office's reliance on conclusory statements instead of objective teachings to reject the claims appears at page 8, lines 10-11. Here, the office action asserts that "The inclusion of subjective information is **just not** non-obvious or novel." (Emphasis added.) Apparently, the Patent Office believes that somehow the words "just not," with their implied air of authority and certainty, are "a substitute for evidence" In re Lee, 277 F.3d at 1343-44. But the Federal Circuit has held that such is not the case. Id.

For the sake of brevity, the many other conclusory statements relied on by the Patent Office to reject the claims will not be treated in detail, but rather will simply be

identified in Appendix B. That these assertions lack any evidentiary support in the record, and are based solely on hindsight reconstruction using Appellant's own claims as a roadmap, is self-evident.

In the same vein as the conclusory statements of obviousness, the office action also includes multiple statements of inherency that are provably incorrect. The Federal Circuit has held that a feature is "inherently disclosed" only if the alleged inherency is the **necessary and inevitable** result of practicing what is asserted to embody the inherent disclosure. In re King, 231 USPQ 136 (Fed. Cir. 1986) (emphasis added). None of the Patent Office's asserted inherencies satisfies this strict standard. For example, the following demonstrates that the allegedly inherent features are not in fact "inherent" because each is susceptible to at least one, and more likely several, alternative scenarios:

Page 3, *"submitting payment information is inherent since this is at minimum a requirement to offer a legitimate bid"*: To the contrary, most if not all existing online auction systems do not require bidders to submit payment information as "minimum requirement to offer a legitimate bid." For example, the Patent Office is invited to try out ePier.com at <http://www.epier.com>, which imposes no such requirement.

Page 3, "inherently seller financial information since this is necessary for at least registration fees and commission fees and monthly charges": Here too, several auction systems exist that do not require sellers to provide financial information. See, e.g., <http://www.epier.com>. Moreover, the Acorn auction system disclosed in Sharp cannot be said to inherently require sellers to submit financial information since the registration fees, commission fees and monthly charges just as likely could have been paid by cashier's check or money order. Accordingly, providing seller's financial information is neither "necessary" nor "inevitable" and thus cannot properly be deemed an inherent feature.

For the reasons discussed above, Appellant submits that all of the above assertions are conclusory statements unsupported by evidence of record that, by definition, cannot satisfy the Patent Office's burden of establishing a prima facie case of obviousness. In re Lee, 277 F.3d at 1343.

Moreover, Appellant takes exception to the substance of these unsupported allegations and submits that they represent an improper use of official notice. Official notice can properly be used only to establish facts that capable of "instant and unquestionable demonstration as being well-known." In re Ahlert, 424 F.2d 1088, 1091 (CCPA 1970). In contrast, official notice

may **not** be used as "the principal evidence upon which a rejection is based," Ahlert, 424 F.2d at 1088, or, as done here, as the motivation for combining or modifying references. Ex Parte Grochowski, No. 95-1343, slip op. at 5 (Bd. Pat. App. & Int. June 27, 1995).

Once the Patent Office's hole-filling statements are dismissed for what they are - namely, conclusory and unsupported assertions entitled to no weight or credence - the patentability of the Group I-III claims is apparent. The Group I, II, and III claims are discussed in turn.

The Group I claims are directed to computer-implemented methods and systems for conducting auctions on the Internet in which a seller provides information identifying an item to be auctioned and information relating to scheduling an auction for the item. An Internet-based auction is initiated at least in part on the auction scheduling information received from the item's seller. The art of record fails to disclose or suggest the combination of features recited in the Group I claims.

The primary citation - Salmon - according to its title purports to relate to a "computer-assisted system for interactively brokering goods or services between buyers and sellers." In fact, Salmon discloses a computer-based system for accepting information about goods/services from sellers, storing

that information in a database, and helping buyers as part of a decision-making process review a diverse body of information stored in the database. In other words, Salmon relates to a knowledge-based system that helps sellers and buyers communicate better. See, e.g., Salmon at Col. 1, lines 18-38. In this regard, Salmon discloses a seller's interface that enables sellers to interactively enter information about goods/services into a database and further discloses a buyer's interface that assists buyers in navigating the database to find desired entries.

However, Salmon fails to disclose or suggest a computer-implemented method or system for conducting auctions on the Internet, as recited in the Group I claims, in which a host computer system receives input from a seller relating to scheduling an auction for the item and then uses that information, at least in part, in conducting an auction for the item over the Internet.

As an initial matter, Salmon makes no mention of online auctions or any other exchange for actually transacting electronic commerce. For example, note that Salmon makes no mention of how transaction finality would be achieved, nor how goods/services would be paid for, authenticated, shipped, etc. These omissions are not surprising because, as noted above,

Salmon does not support electronic commerce transactions but rather deals only with aiding communication between sellers and buyers. Moreover, because Salmon has nothing to do with online auctions or any other type of electronic commerce exchange, it necessarily fails to disclose or suggest conducting auctions on the Internet based at least in part on scheduling information received from sellers of items.

The citation to Sharp fails to cure the deficiencies of Salmon. Sharp relates to a so-called "on-line" auction, by the name of Acorn, that is conducted in part by receiving email messages from bidders and sellers. Specifically, "users enter their bids in the form of messages [or] they may send a message offering one of their own collectables to be sold via the network." Sharp at paragraph 4. However, Sharp fails to disclose or suggest conducting auctions on the Internet, as recited in the Group I claims, in which a host computer system receives input from a seller relating to scheduling an auction for the item and then uses that information, at least in part, in conducting an auction for the item over the Internet.

Moreover, as discussed at length above, the Patent Office has failed to articulate a legally proper motivation for combining Salmon and Sharp. To the contrary, both of the alternative motivations offered for making this combination

(office action at p.3, line 15 - p.4, line 3) are wholly conclusory and unsupported by evidence of record.

In addition, the alleged motivations to combine Salmon and Sharp are based on an incorrect understanding of Salmon. Specifically, the Patent Office is mistaken in asserting that the "auctioning" disclosed in Sharp is interchangeable with the "brokering" allegedly disclosed in Salmon. To the contrary, Salmon's use of the term "brokering" is somewhat of a misnomer. Salmon relates to "brokering" data (i.e., intermediating the communication of information) in a database and does not in fact relate to, or disclose, "brokering" in the sense intended by the Patent Office - namely, acting as a commercial exchange to facilitate financial transactions relating to the sale of goods or services. See, e.g., Sharp at paragraph 3 (using "brokerage" in this sense). Rather, Salmon merely discloses a knowledge-based database system that facilitates communication between sellers and buyers. Notably, Salmon makes no disclosure of online auctions, online markets or any other exchange for actually transacting electronic commerce. Accordingly, a person of skill in the art would have no motivation to substitute Sharp's "online" auction for the information "brokerage" of Salmon. Indeed, because the two represent an apples-oranges comparison, a skilled artisan would be greatly confused by the

notion that Sharp's auction is somehow interchangeable with Salmon's database system.

In point of fact, a specific **disincentive** exists against combining Salmon and Sharp. Sharp indicates in several instances that an automated system for inputting seller's information into the auction database would be undesirable and indeed would undermine the integrity of the auctions. Specifically, Sharp's indication that Acorn desires to provide a simple auction having low commission fees [Sharp at paragraphs 1, 3, 5 and 23] suggests that developing and implementing an elaborate and expensive front-end database system such as disclosed in Salmon would be cost-prohibitive and would overly complicate the system.

Furthermore, Sharp discloses that the Acorn administrators purposefully prefer, and indeed require, human intervention over an automated database front-end to maintain the integrity, accuracy and security of the auctions. Specifically, Sharp notes that (1) messages received from sellers "are completely private ... until [a human operator manually] read[s] them and transfer[s] them to the network" [Sharp at paragraph 19]; (2) "Such security is essential because of tight regulations on what can be said or done on a database accessible by the public" [Sharp at paragraph 18]; and (3) after a seller sends a message

offering its coins, the Acorn administrators must check the coins for authenticity and for the accuracy of the asking price **before** "transferring the message onto the auction portion of the database" [Sharp at paragraph 21].

Accordingly, a person of skill in the art upon reading the above and other passages from Sharp would conclude that replacing the purposeful human intervention in the Acorn auction system would be undesirable and would frustrate many of Acorn's constraints and objectives. Such a clear "teaching away" militates strongly against a conclusion of obviousness under section 103. Cf. Gillette Co. v. S.C. Johnson & Son, 16 USPQ2d 1923, 1927 (Fed. Cir. 1990) (affirming conclusion of non-obviousness where, inter alia, the prior art would have discouraged a person of skill in the art from combining the references in question). Accordingly, the obviousness rejections of the Group I claims are improper for this additional reason.

The citation to Wright fails to cure the deficiencies of Sharp and Salmon. Wright discloses at page 1 that a seller of a house can "set the day they'd like their property to sell." However, Wright fails to disclose or suggest a computer-implemented method or system for conducting auctions on the Internet, as recited in the Group I claims, in which a host

computer system receives input from a seller relating to scheduling an auction for the item and then uses that information, at least in part, in conducting an auction for the item over the Internet. To the contrary, Wright relates to real estate auctions conducted by traditional, non-computer-implemented means. Nothing in Wright, or any of the other art of record, suggests the desirability or feasibility of providing a computer-implemented auction in which sellers are provided control over scheduling their respective Internet-based auctions.

Moreover, the Patent Office has failed to identify any legally proper basis for combining Wright with the other references. As discussed above, the only motivation asserted by the Patent Office (namely, that the combination would provide sellers with more control and accommodate their needs) is classic hindsight reconstruction, lacks any support in the evidentiary record, and thus is legally improper.

The remaining references - Debenedictis, Keithley and "Internet Providers" - although admittedly cited for other reasons, also fail to disclose or suggest a computer-implemented method or system for conducting auctions on the Internet, as recited in the Group I claims, in which a host computer system receives input from a seller relating to scheduling an auction

for the item and then uses that information, at least in part, in conducting an auction for the item over the Internet.

Accordingly, the Group I claims are patentable over the art of record at least for the foregoing reasons.

The Group II claims are directed to an optional advertising feature of the claimed invention. Claim 82, which depends from claim 55, is representative of the Group II claims for the purposes of this appeal. It recites that the seller-provided information includes an indication from the seller whether the item offered for auction is to be advertised to potential bidders. The art of record fails to disclose or suggest this additional feature.

At page 4, lines 5-6, of the office action, the Patent Office asserts that "Wright also teaches ... advertising." Although Wright does in fact use the word "advertising," Appellant vigorously rejects the implication that Wright somehow teaches a computer-implemented method or system for conducting auctions on the Internet, as recited in the Group II claims, in which input is received from a seller indicating whether an item offered for auction is to be advertised to potential bidders. To the contrary, Wright merely discloses that bidders may learn information about an auction from "brochures, advertising and announcements." Wright at 3. But Wright makes no suggestion of

receiving input from a seller indicating whether an item offered for auction is to be advertised to potential bidders, as recited in the Group II claims. More fundamentally, Wright relates only to human-conducted auctions - it fails even to contemplate that auctions can be computer-implemented or conducted on the Internet.

Apparently recognizing that the citation to Wright is seriously deficient for its intended purpose, the Patent Office resorts to more conclusory statements of obviousness based only on hindsight reconstruction. Specifically, at page 4, lines 11-13, the office action states that "It would have been obvious to have the seller indicate if advertising is offered since advertising would have generated interest in the item and auction as suggested by Wright." Similarly, at page 8, lines 12-13, the office action asserts that "The inclusion of advertising is also not patentable because this information is necessary to generate interest in the item and participation in the auction." For the reasons discussed at length above, these conclusory statements are entitled to no weight because they are unsupported by any evidence of record.

Accordingly, the Group II claims are patentable over the art of record at least for the foregoing reasons.

The Group III claims are directed to the additional feature that the seller-provided information includes a verbal description providing subjective information about the item to be auctioned, e.g., regarding condition, authenticity or the like. Contrary to the Patent Office's assertions, neither Sharp nor Salmon discloses or suggests a computer-implemented method or system for conducting auctions in which the seller provides a verbal description of subjective information about an item to be auctioned.

With regard to Sharp, at page 8, lines 5-7, of the office action, the Patent Office erroneously suggests that it is Appellant's burden to show that Sharp does not teach or suggest this feature. But the Patent Office has it backwards - it's the Patent Office's burden to prove that Sharp discloses the feature. And clearly the Patent Office has not done so.

With regard to Salmon, the Patent Office asserts at page 8, lines 7-8, of the office action that column 1, lines 40-45, and column 2, lines 30-35 of Salmon disclose receiving seller-provided information that includes a verbal description providing subjective information about the item to be auctioned. Appellant disagrees. The cited sections of Salmon merely disclose that Salmon's seller interface enforces entry by the seller of a minimum set of information about each of the goods,

and that the descriptive information includes profile vectors of optional information. However, Salmon makes no suggestion or disclosure of a seller-provided **verbal description** providing **subjective information** about an item to be auctioned, as recited in the Group III claims. Any assertion to the contrary is mere hindsight reconstruction.

Accordingly, the Group III claims are patentable over the art of record at least for the foregoing reasons.

B. The Group IV Claims Are Fully Supported by Explicit Disclosure in the Specification

At page 2 of the office action, the Patent Office asserts that the Group IV claims are not supported under 35 USC 112, first paragraph. In particular, the Patent Office asserts that "the specification does not clearly provide support for the seller inputting auction duration, start/end time, immediate start, or indication that the auction is to be invoked by the seller manually." Appellant respectfully disagrees.

The specification as filed provides clear and explicit support for the Group IV claims. For example, the specification states that the "[u]ser may **manually invoke** the auction process, or may **schedule** the consignment node to execute the auction process." (P.18, L.24-25; emphasis added) This statement alone

is sufficient to enable, and establish that the inventor had possession of, the subject matter of the Group IV claims.

First, the "manually invoke" language highlighted above clearly establishes that the inventor had possession of "manually invoking an auction process".

Second, a person of skill in the art would readily understand that a manually invoked auction process could, and typically would, be started "immediately," for example, immediately after the user clicked a "GO" or "START NOW" button or otherwise upon providing input indicating that the auction process is to be invoked.

Third, a person of skill in the art would understand the term "schedule" to inherently and necessarily encompass any and all time-related parameters such as start/end times, durations and the like. This intuitive fact - that a person of skill would readily and necessarily understand the term "scheduling" to encompass specifying a starting time, an ending time and/or a duration - is borne out by a simple example. Anyone who has ever scheduled an event such as a conference call, a meeting or a child's birthday party knows that necessary and inherent in such scheduling is specifying one or more of a starting time, an ending time, and, by definition when both the start and end

times have been specified, a duration (i.e., the difference between the start and end times).

Although the specification support noted above is more than adequate to establish that the inventor had possession of the subject matter of the Group IV claims, the specification goes even further and gives an example of one aspect of scheduling - namely, specifying a starting time and date for an auction process: "[The user] arranges by invoking the appropriate consignment node program a time and date for an electronic auction. ... For example, a [user] may have several Rolex watches he wishes to auction with reserve this Saturday night at 7:00p.m." (P.10, L.5-10)

Although this specific example relates to specifying a starting time and date, the specification makes clear, as noted above, that an end time (and thus a duration) or a manual invocation for an immediate start also may be specified. Accordingly, the specification provides full support for, and clearly establishes that the inventor had possession of, the auction scheduling subject matter of the Group IV claims.

Summary

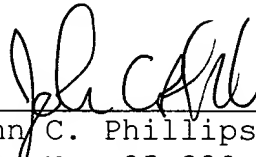
For the reasons discussed above, all of the claims are in condition for allowance. A formal notice of allowance is respectfully solicited.

Please apply any charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

Date: _____

4/8/02



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APPENDIX A

CLAIMS ON APPEAL:

11. (TWICE AMENDED) A computer-implemented method for conducting auctions on the internet, the method comprising:

receiving at a communication handler program executing on a host computer information from a seller corresponding to an item for auction, the information received from the seller including (i) a designation of a category, selected from a list of categories, under which the item for auction is to be listed, and (ii) input relating to scheduling an auction for the item;

processing at least a portion of the received information into a presentation format by a database-to-presentation format formatting program, the presentation format including an indication of the category of the item for auction;

based at least in part on the received auction scheduling input, conducting an auction for the item over the Internet by presenting the presentation format to a plurality of potential bidders;

receiving at the host computer at least, one bid on the auctioned item from a bidder; and

receiving at a host computer payment information from the bidder.

12. (ONCE AMENDED) The method of claim 11 further comprising:

passing the received payment information from a host computer to an external clearinghouse; and

receiving at a host computer a response from the external clearinghouse that payment has cleared.

13. (ONCE AMENDED) The method of claim 11 wherein the database-to-presentation formatting program comprises a database-to-worldwide web mapping module.

14. (THREE TIMES AMENDED) The method of claim 11 further comprising:

receiving payment information from the bidder via a worldwide web page server executing on the host computer.

15. (ONCE AMENDED) The method of claim 11 further comprising:

processing the received payment information with a transaction processor to debit an account identified by the payment information.

16. (TWICE AMENDED) The method of claim 11 further comprising:

associating the payment information with the bid received from the bidder.

17. (ONCE AMENDED) The method of claim 11 wherein the payment information identifies a credit card account.

18. (TWICE AMENDED) The method of claim 11 wherein the information received from the seller includes a price for the auction item.

19. (ONCE AMENDED) The method of claim 11 wherein the presentation format comprises a hypertext markup language format.

20. (TWICE AMENDED) A computer-implemented method of conducting auctions on the internet, the method comprising:

receiving information about an item to be auctioned, the received information including (i) a designation of a category, selected from a list of categories, under which the item is to be auctioned, and (ii) input relating to scheduling an auction for the item;

generating a tracking identifier to identify the item to be auctioned;

processing at least a portion of the received information to create a presentation format corresponding to the item to be auctioned, the presentation format including an indication of the category of the item to be auctioned;

based at least in part on the received auction scheduling input, conducting an auction for the item over the Internet by presenting the presentation format to a plurality of internet participants;

receiving at least one bid for the item from at least one internet participant;

providing to the internet participant instructions for sending payment information to pay for the auctioned item.

21. (TWICE AMENDED) The method of claim 20 wherein conducting an auction for the item comprises opening an auction process to participants on the internet; and further comprising automatically closing the auction process to the internet participants based on a predetermined condition.

22. (ONCE AMENDED) The method of claim 20 further comprising:

receiving the bid for the auctioned item via a world wide web page server interface.

23. (ONCE AMENDED) The method of claim 20 further comprising:

receiving payment information from the participant, the payment information being associated with the bid.

24. (ONCE AMENDED) The method of claim 20 further comprising:

receiving from the participant payment information identifying a credit card account, passing the credit card account information to a clearinghouse and receiving authorization from the clearinghouse that payment with the credit card has cleared.

25. (ONCE AMENDED) The method of claim 20 further comprising:

receiving payment information from the participant, clearing the payment information, and transferring legal ownership of the item to the participant.

33. (TWICE AMENDED) A system for conducting auctions on the internet, the system comprising:

an auction item presentation means for presenting items for auction-to-auction participants connected via the internet, the auction item presentation means presenting items for auction arranged into item categories, each item for auction being associated with an item category designated by a seller of the item to be auctioned;

an auction process means for executing an auction process for the item based at least in part on scheduling input received from the seller;

an auction bid recipient means for receiving, during the auction process, at least one bid for an item being presented by the auction item presentation means; and

payment recipient means for receiving payment information from a bidding participant, the payment information corresponding to the item for which the bid was received.

34. (ONCE AMENDED) The system of claim 33 further comprising payment verification means for passing received payment information to an external clearinghouse for verification.

35. (TWICE AMENDED) The system of claim 33 wherein the auction item presentation means comprises a database-to-presentation formatting program for mapping information from a database into a worldwide web format.

36. (ONCE AMENDED) The system of claim 33 further comprising:
a transaction processor to debit an account identified by the payment information if the received bid is approved.

37. (ONCE AMENDED) The system of claim 33 wherein the received payment information identifies a credit card.

38. (ONCE AMENDED) The system of claim 36 wherein the payment information identifies a credit card and wherein the

transaction processor charges the credit card for the payment associated with the approved bid.

39. The system of claim 33 wherein the auction item presentation means presents the auction item information as a markup language page.

40. (TWICE AMENDED) An auction participant system for enabling participation in an online auction conducted over a packet-switched network, the auction participants including sellers of items to be auctioned and bidders on the items to be auctioned, the system comprising:

an auction item receiving means for receiving a page of information including one or more items available for auction, the received page of information including a designation of item categories with which the items for auction are associated, each seller designating an item category for that seller's item to be auctioned;

an auction process means for executing an auction process corresponding to the item based at least in part on scheduling input received from the seller;

an auction bid input means for inputting a bid for at least one of the items presented in the received page and for inputting payment information associated with the bid; and

bid transmission means for transmitting the bid and payment information via the packet-switched network to a remote bid processor system.

41. (ONCE AMENDED) The system of claim 40 wherein the received page comprises a markup language page and wherein the

auction item receiving means comprises a web browser connected via the internet to a server at the remote bid processor system.

42. (ONCE AMENDED) The system of claim 40 wherein the payment information identifies a credit card provided by the auction participant to pay for the item in the amount of the bid.

43. (TWICE AMENDED) A system for auctioning a uniquely identified item over a packet-switched network, the system comprising:

a database of data records, each data record relating to an item and comprising an identifier to uniquely identify the item and an item category, designated by a seller of the item, under which the item is to be offered for auction;

an auction system, accessible by a plurality of participants via the packet-switched network, that presents an item for auction by providing a mark-up language page of information corresponding to an item that is available for auction during a specified time, the mark-up language page of information including an indication of the item's category;

wherein the auction system executes an auction process corresponding to the item based at least in part on scheduling input received from the seller of the item, receives bids from one or more of the participants over the packet-switched network and terminates the auction when one or more predetermined criteria are satisfied; and

wherein the auction system transmits to a selected auction participant information about where the selected auction participant should submit payment information for the auctioned item.

44. (ONCE AMENDED) The system of claim 43 wherein the auction system refuses to accept bids after the one or more predetermined criteria have been satisfied.

45. (ONCE AMENDED) The system of claim 43 wherein the auction system comprises a web page server interface for receiving bids from auction participants connected to the auction system via the world wide web.

46. (ONCE AMENDED) The system of claim 43 wherein the auction system receives payment information with each bid.

47. (ONCE AMENDED) The system of claim 46 wherein the auction system receives payment information identifying a credit card account, and transmits the credit card account information to a remote verification system before processing the bid.

48. (ONCE AMENDED) The system of claim 47 wherein the auction system selects a bid based on the one or more predetermined criteria, processes the credit card account for the amount of the bid, and transfers legal ownership of the item to the participant that submitted the bid.

49. (TWICE AMENDED) An auction participation system, in communication with an auction processor that processes bids for items being auctioned, for enabling participation in an online auction over a packet-switched network the auction participation system comprising:

an auction page recipient means that receives from a server at the auction processor a page containing information about at

least one item being auctioned, the received page including a designation of an item category with which the at least one item being auctioned is associated, the item category being specified by a seller of the item;

an auction process means for conducting an internet-based auction of the item based at least in part on scheduling input received from the seller of the item;

bid input means for enabling a participant to input a bid for submission to the auction processor via the packet-switched network;

bid award receiving means for receiving an indication that the bid was awarded to the participant; and

payment information input means for enabling the participant to input payment information in response to receiving a bid award.

50. The system of claim 49 wherein the auction page receiving means comprises a web browser system that accesses a server at the auction processor to receive the page.

51. (AMENDED) The system of claim 49 wherein the auction participation system receives payment information with each bid.

52. (TWICE AMENDED) The system of claim 51 wherein the auction participation system receives payment information identifying a credit card account and transmits the credit card account information to a verification system before processing the bid.

53. (TWICE AMENDED) The system of claim 52 wherein the auction participation system selects a bid based on one or more

predetermined criteria, processes the credit card account for the amount of the bid and transfers legal ownership of the item to the participant that submitted the bid.

54. (TWICE AMENDED) A system for facilitating commerce at an internet-based auction, the system comprising:

auction item receiving means for receiving from one or more auction participants information regarding an item to be posted for an auction, the received information including a designation of a category, selected from a list of categories, under which the item is to be auctioned;

auction processor means for processing information received by the auction item receiving means and presenting the processed information in a format to be transmitted to auction participants over a packet-switched network, the format including an indication of the category of the item to be auctioned, the auction processor means including an auction process means for executing an auction process for the item based at least in part on scheduling input received from the seller of the item; and

bid receiving means for receiving bids for the item presented to auction participants.

55. (TWICE AMENDED) A computer-implemented method of facilitating internet auctions, the method comprising:

receiving information from a seller including (i) information about an item to be auctioned at a computer system programmed to receive information over a communication network, and (ii) input relating to scheduling an auction for the item, the auction item information including a selection of a predetermined category, the predetermined category selected by

the seller from a predetermined list of categories maintained by the computer system;

based on at least a portion of the information received from a seller, generating a unique item identifier by a program executing on the computer system;

notifying the seller of the unique item identifier generated in response to receiving information about the item to be auctioned;

based at least in part on the received auction scheduling input, auctioning the item at the computer system with an auction process program, the auction process program indicating the predetermined category selected by the seller and identifying the item to be auctioned;

presenting the auction to a plurality of auction participants via a computer network in response to a request to display information about the item to be auctioned, the request to display the item's information being processed by a computer program executing on the computer system; and

receiving at the computer system at least one bid on the item being auctioned, the computer system updating a display of the item's information in response to receipt of the at least one bid.

64. The method of claim 55 wherein the information received from a seller further comprises an item subcategory, selected by the seller from a list of item subcategories, under which the item is to be offered for auction.

65. The method of claim 55 wherein the information received from a seller comprises a verbal description of the item or a graphical depiction of the item or both.

66. The method-of claim 55 wherein the information received from a seller comprises a verbal description of the item, the verbal description including subjective information supplied by the seller.

67. The method of claim 66 wherein the subjective information includes one or more of following: condition of the item being offered for auction, authenticity of the item being offered for auction or special features of the item being offered for auction.

68. The method of claim 55 wherein, prior to supplying information, the seller registers to sell items for auction.

69. The method of claim 68 wherein registering the seller comprises receiving identity information from the seller.

70. The method of claim 68 wherein registering the seller comprises receiving financial information from the seller.

71. The method of claim 68 wherein registering the seller comprises opening a debit / credit account for the seller.

72. The method of claim 71 further comprising debiting the seller's account by an amount corresponding to a seller's fee.

73. The method of claim 71 further comprising crediting the seller's account by an amount corresponding to the purchase price of an item sold at auction.

74. The method of claim 55 wherein the seller logs into the auction computer system from a computing platform in order to provide information about an item to be auctioned.

75. The method of claim 74 wherein the seller's computing platform comprises a personal computer, a workstation, a cable set-top device, a video game system or a portable computing device.

76. The method of claim 55 wherein an auction participant logs into the auction computer system from a computing platform in order to browse or bid on items offered for auction.

77. The method of claim 76 wherein the auction participant's computing platform comprises a personal computer, a workstation, a cable set-top device, a video game system or a portable computing device.

78. The method of claim 55 wherein the seller-provided information includes a reserve price for the item to be auctioned.

79. The method of claim 78 wherein the seller's reserve price is not revealed to auction participants.

80. The method of claim 55 wherein prior to bidding on an item an auction participant browses the predetermined list of categories to search for desired items on which to place bids.

81. The method of claim 55 wherein the seller ships an item purchased at auction to a destination specified by the purchasing auction participant.

82. The method of claim 55 wherein the seller-provided information includes an indication from the seller whether the item offered for auction is to be advertised to potential bidders.

83. The method of claim 82 wherein the advertisement appears on a main web page maintained by the auction computer system.

84. The method of claim 83 wherein the main web page comprises a welcome page.

85. The method of claim 55 further comprising notifying an auction participant that a bid by that participant has been accepted.

86. The method of claim 55 wherein an auction participant makes electronic payment for an item purchased at auction.

87. The method of claim 86 wherein an auction participant makes electronic payment by providing credit card or debit card information.

88. The method of claim 86 wherein an auction participant makes electronic payment by providing electronic funds transfer information.

89. The method of claim 86 wherein an auction participant makes electronic payment using e-money.

90. The method of claim 55 wherein the seller-provided information includes a specified time period for the auction.

91. The method of claim 55 wherein the auction process program indicates an opening bid for an item offered for auction.

92. The method of claim 55 wherein the auction process program indicates a current bid for an item offered for auction.

93. The method of claim 55 wherein presenting the auction to the plurality of auction participants comprises displaying one or more of the following: a verbal description of the item offered for auction, a graphical depiction of the item offered for auction, or bid information relating to the item offered for auction.

94. The method of claim 55 wherein presenting the auction to the plurality of auction participants further comprises displaying advertisements to the plurality of users.

95. The method of claim 94 wherein the displayed advertisements relate to items offered for auction.

96. The method of claim 94 wherein the displayed advertisements relate to goods / services offered by a third party.

97. The method of claim 55 wherein the computer system updates the display of the item's information each time a bid higher than the current bid is received.

98. The method of claim 55 further comprising obtaining an auction participant's assent to terms of sale before accepting bids from that auction participant.

99. The method of claim 98 wherein the auction participant's assent is supplied via the Internet.

133. (ONCE AMENDED) A computer-implemented method of facilitating Internet-based electronic auctions, the method comprising:

receiving information from a seller of an item to be auctioned, the information including (i) information identifying the item to be auctioned and designating an item category selected by the seller from a list of item categories, and (ii) input relating to scheduling an auction for the item;

storing at least a portion of the received information in a database of information relating to items to be auctioned;

mapping at least a portion of the received information stored in the database into a presentation format that includes the identifying information and the item category provided by the seller;

displaying the presentation format to a plurality of buyers;

based at least in part on the received auction scheduling input, conducting an online auction for the item including

receiving bids on the item from one or more of the plurality of buyers; and

terminating the online auction of the item based on a predetermined condition.

134. The method of claim 133 further comprising notifying a winning buyer that a bid submitted by the winning buyer was a winning bid.

135. The method of claim 133 wherein the information received from the seller identifying the item to be auctioned includes at least one of an item title and an item description.

136. The method of claim 135 wherein the item description includes an electronic image of the item.

137. The method of claim 133 wherein receiving information from a seller further comprises receiving information designating an item subcategory selected by the seller from among a list of item subcategories.

138. The method of claim 133 wherein the predetermined condition based on which the online auction is terminated comprises an occurrence of an auction termination time.

139. The method of claim 133 wherein receiving information from a seller further comprises receiving a reserve price for the item to be auctioned.

140. The method of claim 139 wherein the predetermined condition based on which the online auction is terminated comprises an occurrence of the reserve price being met.

141. The method of claim 134 wherein notifying the winning buyer comprises sending the winning buyer an e-mail message.

142. The method of claim 133 further comprising notifying the seller of an outcome of the online auction.

143. The method of claim 142 wherein notifying the seller comprises sending the seller an e-mail message.

144. The method of claim 143 wherein the seller is notified of the winning buyer's identity.

145. (ONCE AMENDED) The method of claim 133 wherein receiving information from the seller of the item to be auctioned further comprises receiving input relating to an advertisement for the item.

146. (ONCE AMENDED) A computer-implemented method of facilitating Internet-based electronic auctions, the method comprising:

receiving information via the Internet from sellers of items to be auctioned, each seller providing (i) information describing an item to be auctioned and designating an item category and an item subcategory selected by the seller from a list of item categories and subcategories, and (ii) input relating to scheduling an auction for the item;

storing at least a portion of the received information in a database of information relating to items to be auctioned;

displaying the list of item categories and subcategories via the Internet to a plurality of potential buyers, each potential buyer being able to browse the item categories and subcategories selectively to search for a desired item offered for auction; and

for each item to be auctioned: (i) mapping the received information stored in the database corresponding to the item into a presentation format that includes the identifying information and the item category provided by the item's seller; (ii) displaying the presentation format to a plurality of buyers; (iii) based at least in part of the received auction scheduling input, conducting an online auction for the item including receiving bids on the item from one or more of the plurality of buyers; and (iv) terminating the online auction of the item based on a predetermined condition.

147. The method of claim 11 or 26 wherein the communication handler program comprises a Unix daemon.

148. The method of claim 11 wherein the received auction scheduling input relates to an auction duration.

149. The method of claim 11 wherein the received auction scheduling input relates to one or both of an auction starting time and an auction ending time.

150. The method of claim 11 wherein the received auction scheduling input comprises an indication that the auction is to be started immediately.

151. The method of claim 11 wherein the received auction scheduling input consists of an indication that the auction is to be started immediately.

152. The method of claim 11 wherein the received auction scheduling input comprises an indication that the auction is to be invoked by the seller manually.

153. The method of claim 11 wherein the received auction scheduling input comprises an indication that the auction is to be initiated at a future time.

154. The method of claim 20 wherein the received auction scheduling input relates to an auction duration.

155. The method of claim 20 wherein the received auction scheduling input relates to one or both of an auction starting time and an auction ending time.

156. The method of claim 20 wherein the received auction scheduling input comprises an indication that the auction is to be started immediately.

157. The method of claim 20 wherein the received auction scheduling input consists of an indication that the auction is to be started immediately.

158. The method of claim 20 wherein the received auction scheduling input comprises an indication that the auction is to be invoked by the seller manually.

159. The method of claim 20 wherein the received auction scheduling input comprises an indication that the auction is to be initiated at a future time.

160. The system of claim 33 wherein the received auction scheduling input relates to an auction duration.

161. The system of claim 33 wherein the received scheduling input relates to one or both of an auction starting time and an auction ending time.

162. The system of claim 33 wherein the received scheduling input comprises an indication that the auction process is to be started immediately.

163. The system of claim 33 wherein the received scheduling input consists of an indication that the auction process is to be started immediately.

164. The system of claim 33 wherein the received scheduling input comprises an indication that the auction process is to be invoked by the seller manually.

165. The system of claim 33 wherein the received scheduling input comprises an indication that the auction process is to be initiated at a future time.

166. The system of claim 40 wherein the received auction scheduling input relates to an auction duration.

167. The system of claim 40 wherein the received scheduling input relates to one or both of an auction starting time and an auction ending time.

168. The system of claim 40 wherein the received scheduling input comprises an indication that the auction process is to be started immediately.

169. The system of claim 40 wherein the received scheduling input consists of an indication that the auction process is to be started immediately.

170. The system of claim 40 wherein the received scheduling input comprises an indication that the auction process is to be invoked by the seller manually.

171. The system of claim 40 wherein the received scheduling input comprises an indication that the auction process is to be initiated at a future time.

172. The system of claim 43 wherein the received auction scheduling input relates to an auction duration.

173. The system of claim 43 wherein the received scheduling input relates to one or both of an auction starting time and an auction ending time.

174. The system of claim 43 wherein the received scheduling input comprises an indication that the auction process is to be started immediately.

175. The system of claim 43 wherein the received scheduling input consists of an indication that the auction process is to be started immediately.

176. The system of claim 43 wherein the received scheduling input comprises an indication that the auction process is to be invoked by the seller manually.

177. The system of claim 43 wherein the received scheduling input comprises an indication that the auction process is to be initiated at a future time.

178. The system of claim 49 wherein the received auction scheduling input relates to an auction duration.

179. The system of claim 49 wherein the received scheduling input relates to one or both of an auction starting time and an auction ending time.

180. The system of claim 49 wherein the received scheduling input comprises an indication that the auction is to be started immediately.

181. The system of claim 49 wherein the received scheduling input consists of an indication that the auction is to be started immediately.

182. The system of claim 49 wherein the received scheduling input comprises an indication that the auction is to be invoked by the seller manually.

183. The system of claim 49 wherein the received scheduling input comprises an indication that the auction is to be initiated at a future time.

184. The system of claim 54 wherein the received auction scheduling input relates to an auction duration.

185. The system of claim 54 wherein the received scheduling input relates to one or both of an auction starting time and an auction ending time.

186. The system of claim 54 wherein the received scheduling input comprises an indication that the auction process is to be started immediately.

187. The system of claim 54 wherein the received scheduling input consists of an indication that the auction process is to be started immediately.

188. The system of claim 54 wherein the received scheduling input comprises an indication that the auction process is to be invoked by the seller manually.

189. The system of claim 43 wherein the received scheduling input comprises an indication that the auction process is to be initiated at a future time.

190. The method of claim 55 wherein the received auction scheduling input relates to an auction duration.

191. The method of claim 55 wherein the received auction scheduling input relates to one or both of an auction starting time and an auction ending time.

192. The method of claim 55 wherein the received auction scheduling input comprises an indication that the auction is to be started immediately.

193. The method of claim 55 wherein the received auction scheduling input consists of an indication that the auction is to be started immediately.

194. The method of claim 55 wherein the received auction scheduling input comprises an indication that the auction is to be invoked by the seller manually.

195. The method of claim 55 wherein the received auction scheduling input comprises an indication that the auction is to be initiated at a future time.

196. The method of claim 133 wherein the received auction scheduling input relates to an auction duration.

197. The method of claim 133 wherein the received auction scheduling input relates to one or both of an auction starting time and an auction ending time.

198. The method of claim 133 wherein the received auction scheduling input comprises an indication that the auction is to be started immediately.

199. The method of claim 133 wherein the received auction scheduling input consists of an indication that the auction is to be started immediately.

200. The method of claim 133 wherein the received auction scheduling input comprises an indication that the auction is to be invoked by the seller manually.

201. The method of claim 133 wherein the received auction scheduling input comprises an indication that the auction is to be initiated at a future time.

202. The method of claim 146 wherein the received auction scheduling input relates to an auction duration.

203. The method of claim 146 wherein the received auction scheduling input relates to one or both of an auction starting time and an auction ending time.

204. The method of claim 146 wherein the received auction scheduling input comprises an indication that the auction is to be started immediately.

205. The method of claim 146 wherein the received auction scheduling input consists of an indication that the auction is to be started immediately.

206. The method of claim 146 wherein the received auction scheduling input comprises an indication that the auction is to be invoked by the seller manually.

207. The method of claim 146 wherein the received auction scheduling input comprises an indication that the auction is to be initiated at a future time.

208. The method of claim 21 wherein the predetermined condition is defined at least in part by the received auction scheduling input.

209. The system of claim 43 wherein the one or more predetermined criteria are defined at least in part by the received scheduling input.

210. The method of claim 133 wherein the predetermined condition is defined at least in part by the received auction scheduling input.

211. The method of claim 146 wherein the predetermined condition is defined at least in part by the received auction scheduling input.

212. A computer-implemented method of facilitating Internet-based auctions, the method comprising:

receiving input from a seller of an item to be auctioned, the received input including an identification of the item to be auctioned and input relating to scheduling an auction for the item; and

initiating an online auction for the item based at least in part on the auction scheduling input received from the seller.

213. The method of claim 212 wherein the received auction scheduling input relates to an auction duration.

214. The method of claim 212 wherein the received auction scheduling input relates to one or both of an auction starting time and an auction ending time.

215. The method of claim 212 wherein the received auction scheduling input comprises an indication that the auction is to be started immediately.

216. The method of claim 212 wherein the received auction scheduling input consists of an indication that the auction is to be started immediately.

217. The method of claim 212 wherein the received auction scheduling input comprises an indication that the auction is to be invoked by the seller manually.

218. The method of claim 212 wherein the received auction scheduling input comprises an indication that the auction is to be initiated at a future time.

APPENDIX B

Page 4, lines 11-13: "It also would have been obvious to have advertised on a main web page or a welcome page since these pages are more likely to be seen by more people."

Page 4, lines 15-18: "It also would have been obvious to have included a specified time period or duration or start and end time or even an immediate auction since this would also have accommodated at least the needs of the seller thereby encouraging use over Salmon and Sharp."

Page 4, line 18 - Page 5, line 2: "While the term 'Internet' does not appear in the references, it would have been obvious to have used the Internet since this would have provided convenience and accessibility to many users over the world (as opposed to a closed or dedicated network) thereby increasing the customer base ..."

Page 5, lines 3-5: "It also would have been obvious to have the presentation format comprising a hypertext markup language format since this is well known in the art for linking information ..."

Page 5, lines 5-7: "It also would have been obvious to have provided to the Internet participant instructions for sending payment information since this would have been necessary to complete the transaction."

Page 5, lines 7-9: "It also would have been obvious to one having ordinary skill to have opened and automatically closed the auction to participants since this is well known in the art at least for setting a beginning and ending time of the auction for the participants."

Page 5, lines 9-11: "It also would have been obvious to have to have implemented a world-wide-web interface since this was well known in the art for browsing the Internet."

Page 5, lines 11-14: "It also would have been obvious to have implemented a packet-switched network for the auctioning system since this is well known in the art as a fast and efficient mode of transmission which would have benefited the auctioning system as described in Sharp at least to quickly notify participants of the most recent bids."

Page 5, lines 14-16: "It also would have been obvious to have refused bids after a closing time or after a higher bid has been received since these are well known in the auctioning art for finality of the auction itself and finality of sales."

Page 5, lines 16-20: "It also would have been obvious to have notified the seller in response to receiving information and to have notified bidders of bid acceptance, including by E-mail, since notification would have assured the sellers and buyers of completed transmissions and would have eliminated

repeat messages resulting from the users uncertainty of transmissions."

Page 5, line 20-Page 6, line 4: "It also would have been obvious to have advertised on the medium used by participants in Sharp and Salmon since this would have notified users and encouraged participation and would have been obvious to have an indication by the seller for permission to advertise the item since this also would have increased interest in the auction and to have a third party advertise in order to reduce the costs to the participants."

Page 6, lines 4-6: "It also would have been obvious to keep the asking or reserve price undisclosed since this would have been in the best interests of the seller to obtain the best price possible."

Page 6, lines 17-20: "It would have been obvious to one having ordinary skill in the art at the time of the invention to have implemented the payment system as described in the article in the systems of Salmon and Sharp since the payment processing would have been necessary to implement and complete the transactions described in Salmon and Sharp."

Page 6, line 20-Page 7, line 3: "Also, it would have been obvious to have verification and assent to terms of sale before processing the bid since this would have deterred fraudulent

behavior of the participants and would have been a condition of the registration of Sharp."

Page 7, lines 8-11: "It would have been obvious to one having ordinary skill in the art at the time of the invention to have included the information of the interface of Debenedictis in the systems of Salmon and Sharp since this would have provided users with the most current information necessary for an online auction."

Page 8, lines 12-13: "The inclusion of advertising is also not patentable because this information is necessary to generate interest in the item and participation in the auction."

Page 9, lines 2-4: "It is maintained that sellers would have an incentive to auction for the possibility of receiving more money than the asking price (meaning minimum bid or reserve price) since sellers do not have to accept any bid considered too low by the seller."